

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:)	
)	
DARYL TODD DAVIDSON)	CHAPTER 13
)	CASE NUMBER 14-50253
DEBTOR)	
)	
)	
DARYL TODD DAVIDSON)	
PLAINTIFF)	
)	
VERSUS)	ADVERSARY PROCEEDING #
)	
CITIMORTGAGE INC.)	
DEFENDANT)	

COMPLAINT
ADVERSARY PROCEEDING

Complaint for Declaratory Relief as to the validity of Defendants Deed of Trust Lien on Plaintiff's Real Property located at 3849 Sawyer Street Winston-Salem, North Carolina, pursuant to 11 United States Code Section 502 and 506 and North Carolina General Statute Section 45-36.10.

INTRODUCTION

1. This action seeks a determination that the Deed of Trust recorded on February 2, 1998 located in the Forsyth County Register of Deeds Office at Book 1984 Pages 948-955 was satisfied and cancelled of record on February 25, 2003 as evidenced by the Certificate of Satisfaction recorded at Book 2325 Page 1132.

This action also seeks a determination that the Deed of Trust recorded on November 25, 1998 located in the Forsyth County Register of Deeds Office at Book 2037 Pages 1660-1666 was satisfied and cancelled of record on February 25, 2003 as evidenced by the Certificate of Satisfaction recorded at Book 2325 Page 1129.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court pursuant to the provisions of section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the Debtor in that case. Plaintiff brings this action pursuant to Rules 3007 and 7001 of the Rules of Bankruptcy Procedure and 11 United States Code Annotated Sections 105, 501, 502.
3. This Court has both personal and subject matter jurisdiction to hear this case pursuant to section 1334 of Title 28 of the United States Code, Section 157 (b) (2) of Title 28 of the United States Code.
4. This matter is a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event the case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge. This Court has supplemental jurisdiction to hear all State Law claims pursuant to section 1367 of Title 28 of the United States Code.
5. Venue in this District is pursuant to section 1391(b) of Title 28 of the United States.

PARTIES

6. Plaintiff Daryl Todd Davidson, (hereinafter the Debtor), resides at 3849 Sawyer Street, Winston-Salem, North Carolina 27105 and is a Debtor under Chapter 13 of Title 11 of the United States Code, having filed Chapter 13 Bankruptcy on March 13, 2014.
7. Defendant, CitiMortgage Inc., upon information and belief, is a Corporation organized and existing pursuant to the laws of the State of New York and is doing business in the state of North Carolina.

FACTUAL ALLEGATIONS

8. The Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on March 13, 2014.
9. The Debtor owns and resides in the house and lot located at 3849 Sawyer Street, Winston-Salem, North Carolina. The Debtor inherited the real property from his mother which is evidenced by an affidavit filed on April 9, 1992 in the office of the Forsyth County Register of Deeds.
(See Exhibit A)

The legal description of the real property is as follows:

**BEING known and designated as lot no. 116
as shown on map of Northwood Estates,
Section 4 recorded in Plat book 23 page
25 in the office of the Register of Deeds
of Forsyth County, North Carolina.
Also being known and designated as block
2938 lot 116 Forsyth County Tax Maps.**

10. On February 2, 1998 a Deed of Trust was recorded at Book 1984 Page 948 in the office of the Forsyth County Register of Deeds encumbering the Debtor's real property in the original amount of Fourteen Thousand and No/100 Dollars (\$14,000.00). The original holder of this Deed of Trust was Chase Mortgage Brokers Inc.
(See Exhibit B)
11. On March 15, 1999, an Assignment of Mortgage was recorded, at Book 2056 Page 2327 in the of office of the Forsyth County Register of Deeds, by Emergent Mortgage Corporation assigning the Deed of Trust located at Book 1984 Page 948 to Associates Home Equity Services, Inc.
(See Exhibit C)
12. On February 25, 2003, a Certificate of Satisfaction, along with an Affidavit of Lost Note was recorded in Book 2325 Page 1132 in the office of the Forsyth County Register of Deeds. The Certificate of Satisfaction was recorded by Citifinancial Mortgage Inc. The recorded Certificate of Satisfaction recited that the obligation secured by the Deed of Trust located at Book 1984 Page 948-955 was satisfied on February 19, 2003 and requested that the Deed of Trust be cancelled of record.
(See Exhibit D)

13. On November 25, 1998 a Deed of Trust was recorded at Book 2037 Page 1660-1666, in the office of the Forsyth County Register of Deeds. It recited that it secured the same debt secured by the Deed of Trust located at Book 1984 Page 948-955 in the office of Forsyth County Register of Deeds. The holder of the Deed of Trust was Chase Mortgage Brokers Inc.
(See Exhibit E)
14. On December 20, 1999, an Assignment of Mortgage was recorded at Book 2098 Page 1198, in the office of the Forsyth County Register of Deeds, by Carolina Investors Inc. assigning the Deed of Trust located at Book 2037 Page 1660 to Associates Home Equity Services, Inc.
(See Exhibit F)
15. On February 25, 2003, a Certificate of Satisfaction, along with an Affidavit of Lost Note was recorded at Book 2325 Page 1129 in the office of the Forsyth County Register of Deeds. The Certificate of Satisfaction was recorded by Citifinancial Mortgage Inc. The recorded Certificate of Satisfaction recited that the obligation secured by the Deed of Trust located at Book 2037 Page 1660-1666 was satisfied on February 19, 2003 and requested that the Deed of Trust be cancelled of record.
(See Exhibit G)
16. On May 1, 2001, upon information and belief, Associates Home Equity Services, Inc. changed its name to Citifinancial Mortgage Company, Inc.
(See Exhibit H)
17. On July 17, 2006, a certificate of merger was filed with the Secretary of State of North Carolina certifying that Citifinancial Mortgage Company, Inc. merged with and into Citimortgage, Inc.
(See Exhibit I)
18. On June 4, 2014, the Order Confirming Plan entered by this court recited that Citimortgage Inc. had not filed a claim and possibly held an unsecured second mortgage and that any timely filed claim would be treated as unsecured.

19. On June 20, 2014, CitiMortgage, Inc. successor by reason of merger with CitiFinancial Mortgage Company, Inc., filed a proof of claim (Claim #5) indicating that on the petition date the balance owed on the Deed of Trust located at Book 1984 Page 948-955 of the Forsyth County Register of Deeds Office was Seven Thousand Ninety-Three and 71/100 Dollars (\$7,093.71).
20. Pursuant to North Carolina General Statute Section 45-36.10, the certificates of satisfaction filed by Citifinancial Mortgage Company, Inc. comply with the requirements of that statute to mark the Deeds of Trust satisfied by the Forsyth County Register of Deeds. Upon Recordation by Citifinancial Mortgage Company, Inc. the Forsyth County Register of Deeds did in fact index the documents as cancellation of the Deeds of Trust.
21. Pursuant to North Carolina General Statute Section 45-36.6, Citimortgage Inc. could have filed documents of rescission of the satisfaction. No document of rescission has been filed by Citimortgage Inc. or any other entity.
22. As of the date of this complaint, the records of the Forsyth County Register of Deeds show that the Deeds of Trust located at Book 1984 page 948 and Book 2037 Page 1660, are cancelled as a matter of record, and the security interest is terminated.
23. 11 United States Code Section 362 prohibits, without this court's approval, any action to perfect or to reinstate the claimed security interest by Citimortgage Inc. or any other entity claiming interest in the cancelled Deeds of Trust.

Wherefore, the Debtor respectfully prays the Court to enter an order as follows:

1. The lien and/or the security interest granted in that certain Deed of Trust executed on January 23, 1998 and recorded on February 2, 1998 at Book 1984 Page 948 in the amount of \$14,000.00 in favor of Chase Mortgage Brokers Inc., which is now held by Citimortgage Inc., with respect to real property located at 3849 Sawyer Street, Winston-Salem, North Carolina 27105 has been satisfied and is cancelled as a matter of law.

2. The lien and/or the security interest granted in that certain Deed of Trust executed on January 23, 1998 and recorded on November 25, 1998 at Book 2037 Page 1660, in the amount of \$14,000.00 in favor of Chase Mortgage Brokers Inc., which is now held by Citimortgage Inc., with respect to real property located at 3849 Sawyer Street, Winston-Salem, North Carolina 27105 has been satisfied and is cancelled as a matter of law.
3. For such other and further relief as the Court deems just and proper.

This the 5th day of February 2019.

/S/Donald R. Buie

Donald R. Buie
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CITIMORTGAGE)	
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DEFENDANT)	

VERIFICATION

Plaintiff, **DARYL TODD DAVIDSON** being first duly sworn, deposes and says that the contents of the foregoing Adversary Proceeding Complaint are true to his own knowledge, except as to matters alleged on information and belief, and as to those matters, he believes them to be true.

This the 5th day of February 2019.

Daryl Todd Davidson
Daryl Todd Davidson
3849 Sawyer Street
Winston-Salem, NC 27105

Sworn to and subscribed before me this the 5th day of February 2019.

Patricia Baskin
Notary Public

PATRICIA BASKIN NOTARY PUBLIC FORSYTH COUNTY North Carolina MY COMMISSION EXPIRES: 09-25-2021

09-25-2021
My Commission Expires